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**ELECTRONICALLY FILED DOCUMENT**

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

|  |   |                                       |
|--|---|---------------------------------------|
| -----                                    | x |                                       |
| SIGNATURE BANK,                          | : |                                       |
|  | : |                                       |
| Plaintiff,                               | : | 08 Civ. 3893 (NRB)                    |
|  | : |                                       |
| - against -                              | : |                                       |
|  | : |                                       |
| AHAVA FOOD CORP. d/b/a NORTH COUNTRY     | : | <b><u>ANSWER TO COUNTERCLAIMS</u></b> |
| CHEESE CORP., LEWIS COUNTY DAIRY CORP.,  | : | <b><u>OF DEFENDANTS AHAVA OF</u></b>  |
| ST. LAWRENCE FOOD CORP. d/b/a PRIMO      | : | <b><u>CALIFORNIA AND FARIBORZ</u></b> |
| FOODS, YONI REALTY, LLC, SCHWARTZ AND    | : | <b><u>BANAYAN</u></b>                 |
| SONS QUALITY DISTRIBUTORS, INC., MOISE   | : |                                       |
| BANAYAN, ANA BANAYAN a/k/a CHANA         | : |                                       |
| BANAYAN, REBECCA BANAYAN a/k/a           | : |                                       |
| REBECCA BARIMYAN a/k/a REBECCA           | : |                                       |
| BANAYAN-LIEBERMAN, FARIBORZ BANAYAN:     | : |                                       |
| a/k/a AARON BANAYAN, RUBEN BEITYAKOV,    | : |                                       |
| ARI KATZ, AHAVA OF CALIFORNIA, LLC d/b/a | : |                                       |
| AHAVA NATIONAL FOOD DISTRIBUTOR and      | : |                                       |
| NORTH COUNTRY MANUFACTURING, and         | : |                                       |
| JOHN DOES 1 through 50,                  | : |                                       |
|  | : |                                       |
| Defendants.                              | : |                                       |
| -----                                    | x |                                       |

Plaintiff Signature Bank ("Plaintiff"), by its counsel, Herrick, Feinstein LLP, as and for its Answer to the Counterclaims asserted by Defendants Ahava of California, LLC and Fariborz Banayan (collectively, the "Defendants") in their Answer to the Amended Verified Complaint (the "Counterclaims"), hereby alleges as follows:

**AS TO THE PARTIES**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the Counterclaims.

2. Admits the allegations contained in paragraph "2" of the Counterclaims.

**AS TO JURISDICTION AND VENUE**

3. The allegations contained in paragraph "3" of the Counterclaims purport to state a legal conclusion for which no response is required. To the extent a response is required, the allegations are denied.

4. The allegations contained in paragraph "4" of the Counterclaims purport to state a legal conclusion for which no response is required. To the extent a response is required, the allegations are denied.

**AS TO BACKGROUND**

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the Counterclaims, except state that Ahava of California currently purports to sell Kosher food products.

6. The allegations contained in paragraph "6" of the Counterclaims purport to refer to letters sent by Plaintiff pursuant to UCC 9-607 (the "9-607 letters"). To the extent the allegations are inconsistent with the 9-607 letters, those allegations are denied.

7. Denies the allegations contained in paragraph "7" of the Counterclaims.

8. Denies the allegations contained in paragraph "8" of the Counterclaims, except admits that from in or about December 2007 to the present, Ahava of California alleged that statements contained in the 9-607 letters were false, could and would damage Ahava of California and demanded that the Bank retract those letters.

9. Denies the allegations contained in paragraph "9" of the Counterclaims, except admits that the Bank has not retracted the 9-607 letters.

10. Denies the allegations contained in paragraph "10" of the Counterclaims.

11. Denies the allegations contained in paragraph "11" of the Counterclaims.

12. Denies the allegations contained in paragraph "12" of the Counterclaims.

13. Denies the allegations contained in paragraph "13" of the Counterclaims.

**ANSWERING THE FIRST COUNTERCLAIM**  
(Tortious Interference with Contractual Relationships)

14. Plaintiff repeats and realleges each and every response to the allegations contained in paragraphs "1" through "13" above as if fully set forth herein.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of the Counterclaims.

16. Denies the allegations contained in paragraph "16" of the Counterclaims.

17. Denies the allegations contained in paragraph "17" of the Counterclaims.

18. Denies the allegations contained in paragraph "18" of the Counterclaims.

19. Denies the allegations contained in paragraph "19" of the Counterclaims.

20. Denies the allegations contained in paragraph "20" of the Counterclaims, except state that Signature has learned through discovery that AOC maintained bank accounts at HSBC.

21. Denies the allegations contained in paragraph "21" of the Counterclaims.

22. Denies the allegations contained in paragraph "22" of the Counterclaims.

23. Denies the allegations contained in paragraph "23" of the Counterclaims.

24. Denies the allegations contained in paragraph "24" of the Counterclaims.

**ANSWERING THE SECOND COUNTERCLAIM**

**(Tortious Interference With Economic Advantage  
and Prospective Business Relations)**

25. Plaintiff repeats and realleges each and every response to the allegations contained in paragraphs "1" through "24" above as if fully set forth herein.

26. Denies knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraph "26" of the Counterclaims except state that Ahava of California currently purports to sell Kosher food products.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "27" of the Counterclaims.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the Counterclaims.

29. Denies the allegations contained in paragraph "29" of the Counterclaims.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "30" of the Counterclaims.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "31" of the Counterclaims.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "32" of the Counterclaims.

33. Denies the allegations contained in paragraph "33" of the Counterclaims.

34. Denies the allegations contained in paragraph "34" of the Counterclaims.

**ANSWERING THE THIRD COUNTERCLAIM**

**(Conversion)**

35. Plaintiff repeats and realleges each and every response to the allegations contained in paragraphs "1" through "34" above as if fully set forth herein.

36. Denies the allegations contained in paragraph "36" of the Counterclaims.

37. Denies the allegations contained in paragraph "37" of the Counterclaims.

38. Denies the allegations contained in paragraph "38" of the Counterclaims.

39. Denies the allegations contained in paragraph "39" of the Counterclaims.

40. Denies the allegations contained in paragraph "40" of the Counterclaims.

**ANSWERING THE FOURTH COUNTERCLAIM**

(Unjust Enrichment)

41. Plaintiff repeats and realleges each and every response to the allegations contained in paragraphs "1" through "40" above as if fully set forth herein.

42. Denies the allegations contained in paragraph "42" of the Counterclaims.

43. Denies the allegations contained in paragraph "43" of the Counterclaims.

44. Denies the allegations contained in paragraph "44" of the Counterclaims.

**ANSWERING THE FIFTH COUNTERCLAIM**

(Libel Per Se)

45. Plaintiff repeats and realleges each and every response to the allegations contained in paragraphs "1" through "44" above as if fully set forth herein.

46. Denies the allegations contained in paragraph "46" of the Counterclaims and refers the Court to Exhibit A to the Counterclaims for an accurate depiction of its content.

47. Denies the allegations contained in paragraph "47" of the Counterclaims.

48. Denies the allegations contained in paragraph "48" of the Counterclaims, except denies knowledge and information sufficient to form a belief as to what any customer actually believed after it read one or more of Signature's 9-607 letters.

49. The allegations contained in paragraph "49" of the Counterclaims purport to refer to letters sent by Plaintiff pursuant to the 9-607 letters. To the extent the allegations are

inconsistent with the 9-607 letters, those allegations are denied.

50. Denies the allegations contained in paragraph "50" of the Counterclaims.

51. Denies the allegations contained in paragraph "51" of the Counterclaims.

52. Denies the allegations contained in paragraph "52" of the Counterclaims.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "53" of the Counterclaims.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "54" of the Counterclaims.

55. Denies the allegations contained in paragraph "55" of the Counterclaims.

56. Denies the allegations contained in paragraph "56" of the Counterclaims.

57. Denies the allegations contained in paragraph "57" of the Counterclaims.

**ANSWERING THE SIXTH COUNTERCLAIM**  
(Libel)

58. Plaintiff repeats and realleges each and every response to the allegations contained in paragraphs "1" through "57" above as if fully set forth herein.

59. Denies the allegations contained in paragraph "59" of the Counterclaims.

60. Denies the allegations contained in paragraph "60" of the Counterclaims, except admits that Signature has filed and prosecuted civil actions against Ahava of California.

61. Denies the allegations contained in paragraph "61" of the Counterclaims, except admits that Signature has sent 9-607 letters to entities with whom Ahava of California allegedly does business.

62. Denies the allegations contained in paragraph "62" of the Counterclaims.

63. Denies the allegations contained in paragraph "63" of the Counterclaims.

64. Denies the allegations contained in paragraph "64" of the Counterclaims.

- 65. Denies the allegations contained in paragraph "65" of the Counterclaims.
- 66. Denies the allegations contained in paragraph "66" of the Counterclaims.
- 67. Denies the allegations contained in paragraph "67" of the Counterclaims.
- 68. Denies the allegations contained in paragraph "68" of the Counterclaims.
- 69. Denies the allegations contained in paragraph "69" of the Counterclaims.

**FIRST AFFIRMATIVE DEFENSE**

The Counterclaims fail to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Counterclaims are barred by the doctrine of unclean hands.

**THIRD AFFIRMATIVE DEFENSE**

Defendants did not suffer any damages by the alleged conduct set forth in the Counterclaims.

**FOURTH AFFIRMATIVE DEFENSE**

Defendants failed to mitigate their damages to the extent such damages were suffered.

**FIFTH AFFIRMATIVE DEFENSE**

The Counterclaims are barred by the doctrine of waiver.

**SIXTH AFFIRMATIVE DEFENSE**

If it is determined that Defendants are entitled to any damages, such damages should be reduced by Plaintiff's rights of offset.

**SEVENTH AFFIRMATIVE DEFENSE**

To the extent that any of the statements alleged in the Counterclaims were actually made by Plaintiff, such statements were true.

**EIGHTH AFFIRMATIVE DEFENSE**

To the extent that any of the statements alleged in the Counterclaims were expressions of opinion actually made by Plaintiff, such statements are protected as privileged under the First Amendment to the United States Constitution.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff has at all times acted in good faith and observed reasonable commercial standards.

**TENTH AFFIRMATIVE DEFENSE**

Defendants have suffered no damages as a result of the Plaintiff's actions.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendants' claims fail to allege facts sufficient to recover punitive damages against Plaintiff and, in any event, Defendants are not entitled to punitive damages as a matter of law.

**TWELFTH AFFIRMATIVE DEFENSE**

The Plaintiff has acted in good faith, without wrongful intent and without intent to deceive, while Defendants have continuously acted in bad faith, with wrongful intent and with intent to deceive.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendants' claims are barred by the doctrine of economic justification..

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs failed to please special harm or sufficient facts to support their claim for defamation.



**FIFTEENTH AFFIRMATIVE DEFENSE**

Any property sought to be recovered by Plaintiff, was legally recoverable by Plaintiff.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff reserves the right to assert additional defenses if and to the extent that such defenses are applicable.

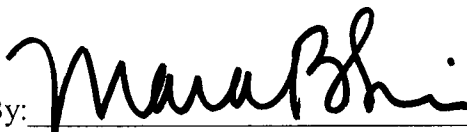
WHEREFORE, Plaintiff respectfully prays as follows:

- (a) That judgment be entered in favor of Plaintiff and against Defendants on the claims asserted in the Amended Complaint;
- (b) That Defendants recover nothing of Plaintiff on their Counterclaims;
- (c) That all costs of this action be taxed against Defendants and that the Plaintiff also recover its costs, disbursements and attorneys' fees in connection with the defense of the Counterclaims; and

(d) For such other and further relief as this Court deems just and proper.

Dated: New York, New York  
July 31, 2008

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